

61.690 Exemption of retirement allowances -- Taxability after December 31, 1997 -- Domestic relations and child support orders.

- (1) Except as otherwise provided by this section and KRS 61.705(4), all retirement allowances and other benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, and the accumulated account balance and cash securities in the funds created under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, are hereby exempt from any state, county, or municipal tax, and shall not be subject to execution, attachment, garnishment, or any other process, and shall not be assigned.
- (2) Notwithstanding the provisions of subsection (1) of this section, retirement benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.
- (3) Qualified domestic relations orders issued by a court or administrative agency shall be honored by the retirement system if:
 - (a) The benefits payable pursuant to the order meet the requirements of a qualified domestic relations order as provided by 26 U.S.C. sec. 414(p). The retirement system shall follow applicable provisions of 26 U.S.C. sec. 414(p) in administering qualified domestic relations orders;
 - (b) The order meets the requirements established by the retirement system and by subsections (3) to (11) of this section. The board of trustees of the retirement system shall establish the requirements, procedures, and forms necessary for the administration of qualified domestic relations orders by promulgation of administrative regulations in accordance with KRS Chapter 13A; and
 - (c) The order is on the form established by the retirement system pursuant to the retirement system's authority provided under paragraph (3)(b) of this subsection.
- (4) A qualified domestic relations order shall not:
 - (a) Require the retirement system to take any action not authorized under state or federal law;
 - (b) Require the retirement system to provide any benefit, allowance, or other payment not authorized under state or federal law;
 - (c) Grant or be construed to grant the alternate payee any separate right, title, or interest in or to any retirement benefit other than to receive payments from the participant's account in accordance with the administrative regulations promulgated by the retirement system and as provided by subsections (3) to (11) of this section; or
 - (d) Grant any separate interest to any person other than the participant.
- (5) Any qualified domestic relations order submitted to the retirement system shall specify the dollar amount or percentage amount of the participant's benefit to be paid to the alternate payee. In calculating the amount to be paid to the alternate payee, the court or administrative agency that is responsible for issuing the order

shall follow the requirements set forth in the administrative regulations promulgated by the board of trustees. Notwithstanding any other statute to the contrary, the board shall not be required to honor a qualified domestic relations order that does not follow the requirements set forth in the administrative regulations promulgated by the board of trustees.

- (6) If the qualified domestic relations order meets the requirements established by the system and by subsections (3) to (11) of this section, payments to the alternate payee shall begin under the following conditions:
 - (a) If the participant is retired and is receiving a monthly retirement allowance, the month following the date the retirement system receives a qualified domestic relations order that complies with the administrative regulations promulgated by the retirement system and subsections (3) to (11) of this section; or
 - (b) If the participant is not retired, the month of the participant's effective retirement date in which the first retirement allowance is payable to the participant or the month in which the participant receives a refund of his or her accumulated account balance as provided by KRS 61.625.
- (7) An alternate payee's benefits and rights under a qualified domestic relations order shall terminate upon the earlier of:
 - (a) The death of the participant;
 - (b) The death of the alternate payee; or
 - (c) The termination of the participant's benefits under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.
- (8) An alternate payee shall not receive a monthly payment under a qualified domestic relations order if the participant is not receiving a monthly retirement allowance.
- (9) The cost of living adjustment provided to the participant pursuant to KRS 61.691 shall be divided between the participant and alternate payee in a qualified domestic relations order as follows:
 - (a) If the order specifies the alternate payee is to receive a percentage of the participant's benefit, then the cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or
 - (b) If the order specifies that the alternate payee is to receive a set dollar amount of the participant's benefit, then the order shall specify that:
 1. The cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or
 2. The alternate payee shall receive no cost of living adjustment.

If the order does not specify the division of the cost of living adjustment as required by this paragraph, then no cost of living adjustment shall be payable

to the alternate payee. If no cost of living adjustment is provided to the alternate payee, then the participant shall receive the full cost of living adjustment he or she would have received if the order had not been applied to the participant's account.

- (10) Except in cases involving child support payments, the retirement system may charge reasonable and necessary fees and expenses to the recipient and the alternate payee of a qualified domestic relations order for the administration of the qualified domestic relations order by the retirement system. All fees and expenses shall be established by administrative regulations promulgated by the board of trustees of the retirement system. The qualified domestic relations order shall specify whether the fees and expenses provided by this subsection shall be paid:
 - (a) Solely by the participant;
 - (b) Solely by the alternate payee; or
 - (c) Equally shared by the participant and alternate payee.
- (11) The retirement system shall honor a qualified domestic relations order issued prior to July 15, 2010, if:
 - (a) The order was on file and approved by the retirement system prior to July 15, 2010. All benefits, including cost of living adjustments payable to the alternate payee, for orders that meet the requirements of this paragraph shall not be eliminated or reduced as a result of the provisions of subsections (3) to (10) of this section and KRS 61.510(27) and 78.510(26); or
 - (b) The order or an amended version of the order meets the requirements established by this section and the administrative regulations promulgated by the retirement system. The order shall not apply to benefit payments issued by the retirement system prior to the date the order was approved by the retirement system.

Effective: July 1, 2013

History: Amended 2013 Ky. Acts ch. 120, sec. 68, effective July 1, 2013. -- Amended 2011 Ky. Acts ch. 68, sec. 3, effective June 8, 2011. -- Amended 2010 Ky. Acts ch. 148, sec. 6, effective July 15, 2010. -- Amended 2002 Ky. Acts ch. 52, sec. 14, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 385, sec. 26, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 255, sec. 35, effective July 15, 1998. -- Amended 1995 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 4, effective April 28, 1995. -- Amended 1992 Ky. Acts ch. 240, sec. 48, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 349, sec. 27, effective July 15, 1988. -- Amended 1984 Ky. Acts ch. 319, sec. 1, effective April 9, 1984. -- Amended 1976 Ky. Acts ch. 321, sec. 40. -- Amended 1972 Ky. Acts ch. 116, sec. 58. -- Created 1956 Ky. Acts ch. 110, sec. 37.

Legislative Research Commission Note (7/15/2010). After consultation with the drafter and under the authority of KRS 7.136, a change was made in codification to subsection (11)(a) of this statute to correct a manifest clerical or typographical error and clarify the particular provisions of the Act at issue.